

STATE OF MICHIGAN
COURT OF APPEALS

FREDDIE MAC and McKINLEY PROPERTIES,

Petitioners-Appellees,

UNPUBLISHED
November 1, 2005

V

TOWNSHIP OF YPSILANTI,

Respondent-Appellant.

No. 257504
Tax Tribunal
LC No. 00-285434

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right the Tax Tribunal's entry of judgment in favor of petitioners resulting in a refund of \$711,842.81 following petitioners' appeal of ad valorem property taxes assessed for the years 2001 through 2004. We affirm.

I

At issue in this case are the real property tax assessments on the Lake in the Woods apartment complex in Ypsilanti Township for the tax years 2001, 2002, 2003, and 2004. The apartment complex is located on approximately 177 acres bordering Ford Lake and consists of 1028 rental units, a clubhouse; fitness center; two swimming pools; volleyball, basketball, and tennis courts; a jogging trail; playground area; private marina; laundry facilities; direct access to Ford Lake; and, for the initial years, a nine-hole golf course.

Lake in the Woods was formerly owned by Lake in the Woods, LLC, which purchased the complex in July 2000 for \$57 million, with a mortgage to petitioner Freddie Mac. Lake in the Woods, LLC appealed its 2001 property tax assessment to the Tax Tribunal, later amending the appeal to include the assessments for the 2002, 2003, and 2004¹ tax years. Based on the assessed valuation, the true cash value (TCV) for each of the years at issue was \$51,400,000.

In December 2002, Freddie Mac initiated foreclosure proceedings against Lake in the Woods, LLC. Freddie Mac subsequently acquired ownership of Lake in the Woods in the

¹ The appeal for the 2004 tax year involved only taxable value.

foreclosure sale and retained petitioner McKinley Properties, Inc, a real estate management company, to manage the Lake in the Woods complex.² The Tribunal thereafter permitted Freddie Mac and McKinley Properties to join as petitioners in the tax appeal.³

During a six-day hearing on the appeal, commencing in April 2004, the parties presented expert testimony and evidence concerning the TCV of Lake in the Woods for the years 2001 through 2003. Respondent contended that the TCV of the property during the three years was \$50,010,000 (2001), \$51,550,000 (2002) and \$51,160,000 (2003). Petitioners contended that the TCV was \$43,210,000 (2001), \$34,300,035 (2002) and \$31,455,000 (2003) and that the taxable value for 2004 should be \$16,089,232.

In rendering its decision, the Tribunal did not accept the values presented by either party, and instead established its own determination of the property's TCV of \$43,200,000 (2001), \$41,800,000 (2002) and \$50,900,000 (2003), and a taxable value of \$21,701,410 for 2004. Because the Tribunal's decision lowered the taxable values of the property, petitioners were entitled to a tax refund. The Tribunal entered a judgment in favor of petitioners, and the Washtenaw County Treasurer thereafter issued a refund check in the amount of \$711,842.81 to McKinley Properties.

II

Under Const 1963, art 6, § 28, “[i]n the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal committed an error of law or adopted a wrong legal principle.” *W A Foote Mem Hosp v City of Jackson*, 262 Mich App 333, 336; 686 NW2d 9 (2004); see also *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). “[F]actual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.” *Id.*, quoting *Michigan Bell Telephone Co v Treasury Dep't*, 445 Mich 470, 476; 518 NW2d 808 (1994). “Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal.” *Mt Pleasant v State Tax Comm*, 267 Mich App 1, 3; 703 NW2d 227 (2005) (citation omitted).

“Substantial evidence” is “the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion.” *In re Payne*, 444 Mich 679, 692 (Boyle, J), 698 (Riley, J); 514 NW2d 121 (1994); *Wayne Co v Michigan State Tax Comm*, 261 Mich App 174, 186; 682 NW2d 100 (2004). “Substantial evidence” means more than a scintilla of evidence, but it may be substantially less than a preponderance of evidence. *Payne, supra*; *Mt Pleasant, supra*. We are obligated to accept the Tax Tribunal's findings of fact if supported by that quantum of evidence. *Payne, supra*. It does not matter that alternative findings also could have been supported by substantial evidence on the record. *Id.*

² McKinley initially was the court-appointed receiver for Lake in the Woods and later entered into a property management agreement with Freddie Mac.

³ Freddie Mac and McKinley Properties were added as petitioners, and Lake in the Woods, LLC, was later permitted to withdraw.

III

Respondent first argues that the Tribunal's failure to set forth the basis of its determinations of true cash value for the 2001, 2002, and 2003 tax years precludes meaningful appellate review. We disagree.

Respondent contends that the Tribunal failed to state the method or methods of valuation used and how the evidence was applied. Respondent notes that even though the parties' stipulated that the income approach was the best method for determining the value of the subject property, the Tribunal stated that it was relying on a combination of both parties' appraisals, but did not explain how it combined the appraisals and arrived at valuations that differ by nearly \$10 million in a one-year period. Further, the parties' calculations of deferred maintenance differed greatly, and the Tribunal's decision failed to state "final conclusions in terms of hard numbers" on the issue of deferred maintenance. Accordingly, because the Tribunal's conclusions contained no analysis of how the Tribunal formulated the different value conclusions, it is not possible for this Court to determine whether the Tribunal's decision was supported by competent, material and substantial evidence, *First City Corp v Lansing*, 153 Mich App 106, 113; 395 NW2d 26 (1986).

The evidence in this case was complex and extensive. Both parties presented lengthy and detailed written appraisal reports, supported by their respective expert's testimony, as well as other specific testimony to support their contentions of true cash value. Each party contested the reliability and accuracy of the other party's appraisal, and provided additional expert testimony challenging specific data, calculations, and conclusions. The Tribunal issued a detailed thirty-four page opinion discussing the parties' contentions, the evidence, and the Tribunal's decisions. In accordance with MCL 205.751,⁴ the Tribunal's opinion and judgment provides a concise statement of facts and conclusions of law. We find the opinion more than adequate to determine whether the Tribunal's decision was supported by competent, material and substantial evidence. *First City Corp*, *supra* at 113-114.

Unlike in *First City Corp*, in this case it is clear that the Tribunal made its own independent determination of true cash value. *Id.* at 113-114. Moreover, unlike in *First City Corp*, there was no issue whether an acceptable method of valuation was used. *Id.* at 114, 116. The parties stipulated that the income approach was the most appropriate method of valuation. The Tribunal noted that both parties had appraisals prepared by MAI's⁵ and that although the appraisals employed different techniques of valuing the subject property, neither method was improper, just different. The Tribunal stated that it was relying on a combination of the appraisal reports, and proceeded accordingly with an analysis of the income approach, used by the parties. The Tribunal expressly stated that it found that the TCV of the subject property was based on the

⁴ MCL 205.751(1) provides: "A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published."

⁵ American Institute of Real Estate Appraisers designation.

income approach. Respondent's contentions concerning the valuation methods considered and applied by the Tribunal are without merit.

In its opinion and judgment, the Tribunal discussed each party's contentions and their appraisals at length, reviewing their methodologies and conclusions in light of the evidence. The Tribunal addressed disputed factors in the parties' appraisals, including the issues of deferred maintenance. With respect to deferred maintenance, the Tribunal placed "some reliance" on the architectural and engineering assessment conducted in April 2000, which indicated that approximately \$325,000 in repairs were needed, as respondent contended. Contrary to respondent's argument, the Tribunal detailed its findings and conclusions concerning valuation, and there is no basis for a remand. *First City Corp, supra* at 113.

IV

Respondent argues that the Tribunal erred in requiring that respondent prove that Lake in the Woods was "intentionally mismanaged" as a condition precedent to consideration of market rates. We find no error.

A key dispute between the parties was whether gross potential rent, and therefore the property valuation, should be based on market occupancy rates, as respondent contended, or on actual occupancy rates, which were far below average market rates, as petitioners contended.

In closing argument, respondent emphasized that if poor management was the cause of low occupancy rates, then the property should be valued at stabilized rates, not at rates that would be consistent with actual occupancy. Citing previous decisions by this Court, respondent essentially argued that the stabilized rates were a more reliable indicator of TCV and that mismanaged property should be valued as if competently owned and managed. Petitioner responded that the cases that had applied the reasoning cited by respondent involved instances of intentional mismanagement,⁶ which was not the case here. The Tribunal found, in response to these arguments, no evidence that the prior owner, Lake in the Woods, LLC, intentionally mismanaged the property, stating:

Respondent believed that the vacancy was self-imposed by the prior owner. The Tribunal finds that some of the vacancy may be attributed to management, however, Respondent failed to provide substantiation that the prior owner intentionally mismanaged the property.

⁶ For example, in *Javens v Madison Heights*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2003 (Docket No. 235301), the property owner failed to complete the required maintenance on three rental units, resulting in the denial of a rental permit and the inability to rent the property. The property owner then argued that the property value should be reduced because of these self-imposed restrictions, i.e., the buildings had no value for taxation purposes because the property could not be rented and there was zero income.

Respondent now assigns error to the Tribunal's finding on the basis that the Tribunal required that petitioner prove intentional mismanagement. Respondent asserts that reliance on actual occupancy rates to arrive at income is correct methodology when actual rates coincide with market rates, but not when actual rates are significantly below market rates, as in this case, because it distorts the conclusions concerning TCV. That is because the capitalization of income method of valuation is premised on the principal that there is a relation between the income a property can earn and the value of the property, *Northwoods Apts v Royal Oak*, 98 Mich App 721, 725; 296 NW2d 639 (1980). Accordingly, when a low occupancy rate is due to mismanagement of the property, the property should be valued using stabilized, market occupancy rates to reach a proper valuation based on income, and the use of stabilized occupancy rates should not be rejected merely because the mismanagement has not been proven to be intentional.

We find respondent's reasoning flawed. As petitioner notes, rather than require respondent to show intentional mismanagement as a condition precedent to disregarding actual occupancy rates, the Tribunal simply rejected respondent's argument that stabilized occupancy was a more reliable indicator of TCV in this case. Evidence established that the property was in a distressed condition. Respondent's expert appraiser agreed that management decisions caused high vacancy and "*took a toll on the property's condition.*" In effect, the Tribunal simply considered the actual physical condition and economic circumstances of the property, which was proper.

As respondent noted in closing argument, some buildings in the apartment complex were burned out and were uninhabitable. Respondent argued that the prior owner's shut off of utilities to the burned-out buildings and the subsequent freezing and breaking of water pipes was indicative of the bad management, and supported respondent's argument that actual occupancy rates should not be used as the basis of potential income. However, the fact remains that there were burned out buildings, which were uninhabitable, which result in a diminished property value. The reduced occupancy thus appropriately reflects the distressed physical condition. The market occupancy rates advocated by respondent are not a more reliable indicator of true cash value in these circumstances. *Ramblewood Assoc v Wyoming*, 82 Mich App 342, 346-347; 266 NW2d 817 (1978). Respondent's allegation of error is without merit.

V

Respondent argues that the Tribunal erred in failing to adhere to the statutory requirement of MCL 211.27(1)⁷ mandating that the "present economic income" of Lake in the Woods be considered in determining "cash value." We find no error.

⁷ MCL 211.27(1) provides in relevant part: "In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; *present economic income of land if the land is being farmed or otherwise put to income producing use; . . .*" (emphasis added).

Respondent's argument is premised, as above, on the Tribunal's alleged failure to determine TCV pursuant to respondent's appraisal, which set forth economic income and expenses based on market rates, assuming competent and responsible management. As discussed above, respondent mischaracterizes the Tribunal's reasoning and conclusions. The Tribunal merely rejected respondent's theory that market rates provided a more accurate calculation of the TCV of the property at issue. The Tribunal based its determinations of TCV on the appraisals, which considered present economic income and factored in projections of market rent as of each valuation date, i.e., assuming competent management. As petitioner points out, if the Tribunal had used actual income as the basis of its determination of TCV, it would have based its 2003 determination on a negative cash flow of \$2,500,000, and, therefore, the TCV would have been zero. We find no basis for respondent's argument that the Tribunal erred in determining TCV merely because it rejected respondent's assumption of stabilized occupancy.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio